IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA:

Cr.A.No.266 of 2007.

Date of Decision :27.12.2007.

Kalema Abdul Sule

…Appellant.

Versus:

State of H.P. …Respondent.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for judgment?[1]

For the appellant: Mr.Dharamvir Singh, Advocate.

For Respondent. Mr.Ashok Chaudhary, Addl. Advocate General.

Sanjay Karol, J (Oral).

The present appeal arises out of the judgment dated 25th June, 2007 passed by Special Judge, Kullu, H.P. in Sessions trial No. 29 of 2005 titled as State Vs. Kalema Abdul Sule, whereby the appellant has been held guilty for the commission of offence under Section 21-B of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as the Act)

The appellant was directed to undergo rigorous imprisonment for a period of four years and also pay fine of Rs.50,000/-. In default thereof to further undergo imprisonment for six months.

After arguing for considerable period of time, the learned counsel for the appellant confined his submission to the sentence awarded by the court below.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

On 3rd May, 2005 the appellant was found possessing 40 grams of brown sugar. After due completion of the investigation, the challan was filed in concerned court and the appellant was charged for an offence under Section 21-B of the Act, Section 471 I.P.C. and Section 14 of the Foreigner's Act.

Based upon the evidence led by the parties, the appellant was found guilty for commission of offence under Section 21-B of the Act only. The appellant was accordingly sentenced to undergo imprisonment.

In terms of the notification, the contraband possessed by the appellant which is 40 grams is less than commercial quantity of 250 grams and more than small quantity (5 grams). It has been argued by the learned counsel that the appellant is a foreign National and a poor person. He has family comprising of his wife and two children who are dependant upon him and are living in Nigeria. The appellant was the only bread earner in the family. During the trial and imprisonment, his conduct has been good and therefore his sentence be reduced keeping in view the aforesaid facts and circumstances.

The appellant was arrested on 3rd May, 2004 and has not been released on bail through out and even during the trial he has been put behind the bar. Keeping in view the attending circumstances as also the submission made by the learned legal aid counsel appearing on behalf of the appellant, taking a lenient view the sentence awarded by the trial court is reduced to the sentence already undergone. However, the sentence with regard to fine is not reduced and the appellant shall pay the same but in the event the same is not being deposited by the appellant, he shall further undergo rigorous

imprisonment for a period of five months instead of six months as awarded by the court below. The appeal is accordingly disposed of.

(Sanjay Karol),
Judge.

December 27, 2007(R)